

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLUMBERS & PIPEFITTERS LOCAL 178  
HEALTH & WELFARE TRUST FUND, on  
behalf of itself and all others similarly  
situated

Plaintiff,

v.

ACTAVIS HOLDCO U.S., INC., TEVA  
PHARMACEUTICALS USA, INC., TEVA  
PHARMACEUTICAL INDUSTRIES LTD.,  
MYLAN INC., MYLAN  
PHARMACEUTICALS INC., UDL  
LABORATORIES, INC., ENDO  
INTERNATIONAL PLC; PAR  
PHARMACEUTICAL HOLDINGS, INC.,  
QUALITEST PHARMACEUTICALS, INC.,  
HERITAGE PHARMACEUTICALS INC.,  
BRECKENRIDGE PHARMACEUTICAL,  
INC., UPSHER-SMITH LABORATORIES,  
INC., and ROUSES POINT  
PHARMACEUTICALS, LLC,

Defendants.

No. 17-cv-00144

The Honorable Cynthia M. Rufe

**DEFENDANTS' MOTION TO MODIFY THE COURT'S FEBRUARY 27, 2017 ORDER  
IN LIGHT OF RECENTLY FILED END-PAYER ACTIONS**

The above-captioned matter is a putative class action brought by end payer Plaintiff Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund ("Local 178") alleging price fixing with respect to the generic drug, propranolol. This Court is now currently presiding over three end-payer plaintiff ("EPP") cases—two of which were recently filed and have not yet been served. Indeed, one EPP case was filed on February 24, 2017—the same day that the parties submitted letters regarding the response time in this matter. *Philadelphia Federation of*

*Teachers Health & Welfare Fund v. Actavis Holdco U.S., Inc. et al.*, E.D. Pa. Case No. 17-cv-865.

Accordingly, Defendants ask the Court to modify its February 27, 2017 Order (Dkt. # 38) to provide that Defendants' time to answer, move or otherwise respond to the Complaint shall be extended until after the EPP cases pending before this Court are consolidated and the plaintiffs in the consolidated cases serve a Consolidated Class Action Complaint. This procedure, which has been employed in other generic drug antitrust litigation, will provide for the most prompt, orderly, and efficient disposition of the propranolol cases pending before this Court.

**I. The Three EPP Cases Pending Before this Court Should be Consolidated Because They Make Substantially Similar Allegations of Price-Fixing With Respect to Propranolol**

On February 27, 2017, the Court ordered Defendants in the Local 178 matter to answer, move, or otherwise plead in response to the complaint by March 7, 2017. (Dkt. #38.) The recently filed EPP cases now ensure that the three EPP propranolol cases before this Court are proceeding on three different schedules:

- *Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund v. Actavis Holdco U.S., Inc. et al.*, E.D. Pa. Case No. 17-cv-144 (filed January 10, 2017): response deadline is March 7, 2017 (Dkt. #38);
- *Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund v. Actavis Holdco U.S., Inc., et al.*, E.D. Pa. Case No. 17-cv-535 (filed February 6, 2017): response time unknown because the complaint has not yet been served, *see* Fed. R. Civ. P. 12(a)(1)(A)(i);
- *Philadelphia Federation of Teachers Health & Welfare Fund v. Actavis Holdco U.S. et al.*, E.D. Pa. Case No. 17-cv-865 (filed February 24, 2017): response time unknown because the complaint has not yet been served, *see* Fed. R. Civ. P. 12(a)(1)(A)(i).<sup>1</sup>

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<sup>1</sup> Further complicating matters, the DPP propranolol case pending before this Court is proceeding on yet a different schedule. *See Rochester Drug Co-Operative Inc. v. Actavis Elizabeth LLC, et al.*, E.D. Pa. Case No. 16-cv-

Defendants bring this motion to modify the Court's February 27, 2017 ruling so that these three EPP cases proceed on the same schedule.

Defendants share the Court's view that this litigation should proceed in a prompt, orderly, and efficient manner. As this Court and others have recognized in other generic drug antitrust cases, those interests are best served when substantially similar complaints, such as the three EPP cases here, are consolidated and the plaintiffs bring a single consolidated class action complaint, to which Defendants then respond. The digoxin and doxycycline cases before this Court were consolidated in this manner. *In re Generic Digoxin & Doxycycline Antitrust Litigation*, E.D. Pa. Case No. 16-md-2724, Dkt. ##2 (Aug. 15, 2016) & 80 (Nov. 17, 2016). Likewise, the Honorable Judges Gene E.K. Pratter and Thomas N. O'Neill, Jr. have both entered consolidation orders in other generic pharmaceutical cases. *See UFCW Local 1500 Welfare Fund v. Dr. Reddy's Labs., Inc., et al.*, E.D. Pa. Case No. 16-cv-6058, Dkt. ##40 (Jan. 4, 2017) & 63 (Jan. 23, 2017) (consolidating cases alleging price fixing with respect to the drug divalproex); *A.F. of L. – A.G.C. Building Trades Welfare Plan v. Teva Pharmaceuticals USA, Inc., et al.*, E.D. Pa. Case No. 16-cv-5056, Dkt. #35 (Dec. 20, 2016) (same in cases involving pravastatin). Similarly, several generic drug antitrust matters pending outside this district have been organized in the same way. *See, e.g., In re Fluocinonide Antitrust Litig.*, S.D.N.Y. Case No. 16-mc-8911, Dkt. #1 (Dec. 22, 2016) (consolidating cases alleging price fixing with respect to the drug fluocinonide); *In re Clobetasol Antitrust Litig.*, S.D.N.Y. Case No. 16-mc-7229, Dkt. # 1 (Dec. 22, 2016) (same in cases involving clobetasol); *In re Desonide Antitrust Litig.*, S.D.N.Y. Case No. 16-mc-7987, Dkt. #1 (Dec. 22, 2016) (same in cases involving desonide).

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6672, Dkt. #27 (Feb. 7, 2017) (response deadline extended until after disposition of Plaintiff Rochester Drug's Co-Operatives Motion to Transfer that is pending before for the Judicial Panel on Multidistrict Litigation).

Consolidation of the EPP cases is therefore consistent with past practice and also serves the interests of efficiency and conservation of litigant and judicial resources. There are three EPP cases currently pending before the Court. To the extent Local 178 has suggested coordination of this case with the EPP cases pending in the Southern District of New York before Judge Rakoff is necessary,<sup>2</sup> the need for orderly coordination and efficient management of the three EPP cases before this Court makes that impractical.

Consolidation at this juncture would also prevent the parties from needlessly expending time and resources engaging in motion to dismiss briefing with respect to Local 178's complaint. If the EPP cases are eventually consolidated before this Court or elsewhere the Local 178 complaint will not be the operative complaint. Accordingly, the parties and the Court will have devoted significant time and resources to briefing and deciding a motion seeking dismissal of a complaint that will have been superseded by another pleading.

Moreover, logistical chaos will ensue from having these three similar EPP cases proceeding on different schedules. If the current deadlines hold, the dispositive motions will be filed on different dates, and the parties' responses and replies will similarly lack any coordination.

## **II. Conclusion**

For these reasons, Defendants respectfully request that the Court modify its February 27, 2017 Order to provide that Defendants' time to answer, move or otherwise respond to the Complaint shall be extended until after the EPP cases pending before this Court are

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<sup>2</sup> Letter from Jeannine M. Kenney, Esq. to The Honorable Cynthia M. Rufe re: *Plumbers & Pipefitters Local 178 Health & Welfare Trust Fund v. Actavis Holdco U.S., Inc., et al.*, No. 17-cv-144 (E.D. Pa.) (CMR) (Feb. 24, 2017).

consolidated and the plaintiffs in the consolidated cases serve a Consolidated Class Action Complaint.

Defendants will make themselves available for a case management conference, should the Court so request.

Finally, although the two recently filed EPP complaints have not yet been served, Defendants in the Local 178 matter will inform the parties in those cases of the instant Motion.

Dated: March 1, 2017

By: /s Jan P. Levine  
Jan P. Levine  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, PA 19103-2799  
Tel: (215) 981-4000  
Fax: (215) 981-4750  
levinej@pepperlaw.com

By: /s D. Jarrett Arp  
D. Jarrett Arp  
Gibson, Dunn & Crutcher, LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
202-955-8678  
jarp@gibsondunn.com

*Counsel for Heritage Pharmaceuticals Inc.*

By: /s Edward D. Hassi  
Edward D. Hassi  
O'Melveny & Meyers LLP  
1625 EYE Street, N.W.  
Washington, DC 20006  
202-383-5336  
ehassi@omm.com

*Counsel for Par Pharmaceutical, Inc.*

By: /s Sheron Korpus  
Sheron Korpus (*pro hac vice motion pending*)  
Kasowitz Benson Torres & Friedman LLP  
1633 Broadway  
New York, New York 10019  
Tel: (212) 506-1700  
Fax: (212) 506-1800  
skorpus@kasowitz.com

*Counsel for Actavis Holdco U.S., Inc. and Teva Pharmaceuticals USA, Inc.*

By: /s Chul Pak  
Chul Pak  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
1301 Avenue of the Americas, 40th Fl.  
New York, NY 10019  
212-497-7726  
cpak@wsgr.com

*Counsel for Mylan Inc., Mylan Pharmaceuticals Inc., and UDL Laboratories Inc.*

By: /s Jay P. Lefkowitz, P.C.  
Jay P. Lefkowitz, P.C.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
212-446-4970  
lefkowitz@kirkland.com

*Counsel for Upsher-Smith Laboratories, Inc.*

*Incorrectly named as Par Pharmaceutical Holdings, Inc., Qualitest Pharmaceutical, Inc. and Endo International plc*

By: /s Bobby S. Burchfield  
Bobby S. Burchfield  
Brian R. Meiners  
Lauren A. Warner  
Christopher C. Yook  
King & Spalding LLP  
1700 Pennsylvania Avenue NW, Suite 200  
Washington, DC 20006  
[bburchfield@kslaw.com](mailto:bburchfield@kslaw.com)  
[bmeiners@kslaw.com](mailto:bmeiners@kslaw.com)  
[lwarnar@kslaw.com](mailto:lwarnar@kslaw.com)  
[cyook@kslaw.com](mailto:cyook@kslaw.com)

*Counsel for Rouses Point Pharmaceuticals, LLC*

By: /s Stacey Anne Mahoney (admitted pro hac vice)  
Stacey Anne Mahoney  
MORGAN, LEWIS & BOCKIUS LLP  
101 Park Avenue  
New York, New York 10178  
Telephone: (212) 309-6000  
Facsimile: (212) 309-6001  
[stacey.mahoney@morganlewis.com](mailto:stacey.mahoney@morganlewis.com)

R. Brendan Fee  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 963-5000  
Facsimile: (215) 963-5001  
[brendan.fee@morganlewis.com](mailto:brendan.fee@morganlewis.com)

*Counsel for Defendant Breckenridge Pharmaceutical, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed electronically and is available for viewing and downloading from the Court's ECF System. Notice of this filing will be sent to all counsel of record by operation of the ECF System.

/s/ Jan P. Levine

Jan P. Levine

Dated: March 1, 2017